IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2947 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MOONLIGHT CERAMIC INDUSTRIES - Petitioner(s)

Versus

G I D C & 1 - Respondent(s)

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Appearance :

MR PRAFUL J BHATT for Petitioner(s) : 1,
MR YF MEHTA for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 01/12/2005

ORAL JUDGMENT

In this petition under Article 226 of the Constitution of India, the petitioner, erstwhile allottee of the plots in question, has prayed for an appropriate writ, direction or order directing the respondent Corporation to transfer the plot Nos. 81, 82, 91 and 92 in the name of Kishore Industries and

to transfer plot Nos. 79, 80, 93 and 94 and the plot adjoining to plot Nos. 93 and 94 to M/s. Vikas Industries without compelling the petitioner to pay to the respondent Corporation, the amount demanded by it by letter dated 28th of June, 1990 or any other amount as penalty or its transfer fee which is not in contemplation either in the agreement made between the parties hereto or in the regulations framed by the respondent Corporation.

2. It appears from the record that after the aforesaid communication dated 28.6.1990 subsequently by communication/order dated 3.7.1990 the plots in question are transferred in favour of M/s. Kishre Industries and M/s. Vikas Industries, as prayed for by the petitioner. It also appears from the aforesaid communication/orders dated 3.7.1990 granting permission for transfer of aforesaid plots that the said permission for transfer has been given by the Corporation after the petitioner licencee has paid all the dues of the Corporation upto 31.3.1999 and he has also paid the Corporation's share in unearned increment in value of the land and even a supplementary agreement also came to be executed on 3.7.1990 between the Corporation, licencee and the transferor. Under the circumstances, it appears that on getting the said plots transferred in favour of respective purchasers/transferees, the petitioner has challenged the communication dated 28.6.1990 by which the petitioner was required to pay interest amount of

Rs. 9,079/= and penalty of Rs. 1,16,271/= and Rs. 47,527/= as transfer fee for both the cases so that the petitioner can get the refund. Once the petitioner has paid the aforesaid amount and has got the property transferred in favour of those transferees in whose favour the petitioner wanted to transfer the plots in question, it is not open for the petitioner to challenge the same, otherwise the GIDC would not have even granted permission to transfer the aforesaid plots which was subsequently granted vide communication dated 3.7.1990.

3. Considering the aforesaid facts and circumstances, the petition being devoid of any substance requires to be dismissed and is dismissed. Rule is discharged.

[M.R. Shah, J.]

RMR.